REMARKS/ARGUMENTS

By this Amendment claims 35, 52, 54, 61, 62 and 64 are amended. No claims are cancelled. No claims are added. Claims 35, 38-42, 44-52, 54, 58-62 and 64-68 are pending in the application.

Favorable reconsideration is respectfully requested in view of the foregoing amendments and the following remarks.

Claim Rejections – 35 USC § 101

The Examiner rejects claim 62 under 35 U.S.C. 101 because the Examiner believes that the claimed invention is directed to non-statutory subject matter.

According to the Examiner claim 62 is drawn to an article of manufacture comprising computer usable medium having computer readable program code embodied and the computer usable medium is broad enough to be interpreted as a signal. The Examiner suggests replacing the computer usable medium with a non-transitory computer usable medium in the claims as well as in the specification.

The Applicants submit that claim 62 has been amended accordingly.

Claim Rejections – 35 USC § 103

The Examiner rejects the claims under 35 U.S.C. 103(a) as being unpatentable over combinations of Fellenstein, Jackson, Chen, Barsness, D'Ippolito and Ellesson. In particular, the Examiner believes that D'Ippolito teaches identifying the cost associated with a failure to meet an agreed performance under a metric, wherein the Examiner believes that the penalty/impact field taught by D'Ippolito is equivalent to the Applicants' monetary penalty amount specified by a service level agreement.

In the Applicants' invention a number of nodes in a cluster execute applications pursuant to a

service level agreement (SLA). When the terms of the SLA cannot be met, more servers can be requested from a remote domain. The decision whether to allocate more servers to meet the demand is negotiated on the basis of dollar amounts as specified by the SLAs, rather than basing the decision only on the conventional calculations of the actual computing resources. In making these decisions the Applicants' invention considers factors such as the dollar cost of not meeting a requirement of the SLA, including the SLA specified dollar penalties for not meeting the requirements of the SLA, the dollar costs of accepting the resources granted, etc.

Furthermore, in the Applicants invention the remote domain can make a counter offer to the requesting node. When the requesting node receives the counter offer, it can make a determination whether to accept the counter offer according to the service level agreement. For example, if the cost of using the resources specified in the counter offer exceeds the penalties specified by the service level agreement for not meeting the terms of the agreement, the requesting node may elect to violate the agreement and pay the penalty. Therefore, the requesting node can allocate the resource specified in the counter offer according to the service level agreement.

More specifically, the Applicants' system makes a decision whether to allocate additional resources from the remote domain based on the dollar value of the penalties as set by the SLA for not meeting the requirements of the SLA. Thus, the Applicants' system may intentionally fail to meet a requirement of an SLA, in spite of the monetary penalties imposed by the SLA, if it determines that it is more cost effective to not meet the requirement.

Therefore, even if D'Ippolito does suggest the Applicants' monetary penalty amount as suggested by the Examiner, a position which the Applicants strongly traverse, there is no teaching or suggestion in D'Ippolito that a resource specified by the remote domain in a counter offer be allocated according to the monetary penalty amount specified in a service level agreement as required by claims 61 and 64. Accordingly, claims 61 and 64 are believed to be allowable over D'Ippolito.

Additionally, none of the other references teaches or suggests allocating a resource specified by a remote domain in a counter offer according to a monetary penalty amount determined according to the service level agreement, as required by claims 61 and 64. Therefore, claims 61

and 64 are also believed to be allowable over the remaining references. Furthermore, the dependent claims depend either directly or indirectly from allowable claims 61 and 64 and are believed to be allowable over the references for at least the same reasons.

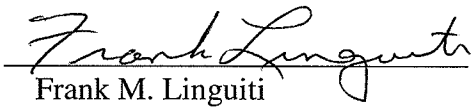
For at least the reasons set forth above, it is respectfully submitted that the above-identified application is in condition for allowance. Favorable reconsideration and prompt allowance of the claims are respectfully requested.

Should the Examiner believe that anything further is desirable in order to place the application in even better condition for allowance, the Examiner is invited to contact Applicants' undersigned attorney at the telephone number listed below.

Respectfully submitted,

CAESAR, RIVISE, BERNSTEIN,
COHEN & POKOTILOW, LTD.

Please charge or credit our Account No. 03-0075 as necessary to affect entry and/or ensure consideration of this submission.

By: 

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